IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

WEDNESDAY, THE 14TH MARCH 2007 / 23RD PHALGUNA 1928

OP.No. 32790 of 2000(C)

PETITIONERS:

---

1. **BABU.P., STAFF NURSE,**
   GOVERNMENT TALUK HEADQUARTERS HOSPITAL
   NILAMBUR.

2. **SOYA K., STAFF NURSE,**
   GOVERNMENT TALUK HEADQUARTERS HOSPITAL,
   THIRURANGADI.

3. **SINDHU KIIZHAKKEPAPPATTU, STAFF NURSE,**
   GOVERNMENT TALUK HEADQUARTERS HOSPITAL,
   THIRURANGADI.

4. **SREEJA R.S., STAFF NURSE,**
   DISTRICT HOSPITAL MANJERI.

5. **SHAGI P.I., STAFF NURS,**
   DISTRICT HOSPITAL, MANJERI.

6. **BINCY MOL CYRIAC, STAFF NURSE,**
   DISTRICT HOSPITAL, MANJERI.

7. **SMITHA C., STAFF NURSE,**
   MEDICAL COLLEGE HOSPITAL,
   VANDANAM, ALAPPUZHA.

8. **VEENA K., STAFF NURSE,**
   MEDICAL COLLEGE HOSPITAL,
   ALAPPUZHA.

9. **SHEEJA O., STAFF NURSE,**
   PRIMARY HEALTH CENTRE,
   THRIKANAPURAM, THAVANOOR P.O.

BY ADV. SRI.K.JAJU BABU
SRI.BRIJESH MOHAN

OP. NO.32790/2000

RESPONDENTS:
----

1. **STATE OF KERALA, REP.BY SECRETARY TO GOVERNMENT, HEALTH AND FAMILY WELFARE DEPARTMENT, GOVERNMENT SECRETARIAT , TRIVANDRUM.**

2. **THE DIRECTOR OF HEALTH SERVICE, TRIVANDRUM.**

3. **INDIAN NURSING COUNCIL, REP.BY ITS SECRETARY, KOTLA ROAD, TEMPLE LANE, NEW DELHI 2.**

4. **KERALA NURSES AND MIDWIVES COUNCIL, REP.BY ITS REGISTRAR, READ CROSS ROAD, TRIVANDRUM 34.**

* **ADDL.R5 TO R12 ARE IMPLEADED**

5. **JAYASREE S., W/O.SUDHIRCHANDRA, SUKU SADANAM, MALAMPARA, VIZHINJAM, KAZHAVOOR, TRIVANDRUM.**

6. **REMA A., D/O. STAFF NURSE, SREECHITRA INSTITUTE OF MEDICAL SCIENCE, TRIVANDRUM.**

7. **PADMAJA DEVI, STAFF NURSE, SREECHITRA INSTITUTE OF MEDICAL SCIENCE, TRIVANDRUM.**

8. **ANASOOYA R., W/O. SHANAVAS K. KEERTHANAM, S.R. NAGAR, PATTOM, THIRUVANANTHAPURAM.**

9. **G.S.JAYASREE, D/O. C.GOPINATHAN, KOPRAPARA VEEDU, KALADI ROAD, CHAKAL, TRIVANDRUM.**

10. **PADMINIAMMA P., W/O.SANTHOSHKUMAR N., KAROTTUPANDIPPILLIL HOUSE, MUTHALAKODAM P.O., THODUPUZHA PIN. 685 605.**

11. **PHILOMINA, STAFF NURSE, SREE THITHIRA THIRUNAL INSTITUTE FOR MEDICAL SCIENCE AND TECHNOLOGY, THIRUVANANTHAPURAM.**

12. **NIRMALA V., W/O.A.V.RAVI, ARAKKUZHI HOUSE, PAZHANGANADU, KIZHAKKAMBALAM P.O., ERNAKULAM , NOW WORKING AS LECTURER, SME OUR TOWERS, T.D.ROAD, ERNAKULAM.**

*** ADDL.R5 TO R12 ARE IMPLEADED AS PER ORDER DT.13.8.2004 IN I.A. NO.10740/2004.**

OP. NO.32790/2000

*** ADDL.R13 IS IMPLEADED**

ADDL.R13. K.KAMALAKSHI, STAFF NURSE GRADE-I,
GENERAL HOSPITAL , THALASSERY,
KANNUR DISTRICT.

*** ADDL.R13 IS IMPLEADED AS PER ORDER DT.20.12.2004 IN IA. NO.5047/2004.**

*** ADDL.R14 IS IMPLEADED .**

ADDL.R14. ELIZABETH ABRAHAM, D/O.M.V.ABRAHAM,
MALAYIL NOUSE, MOTHER THERESA ROAD,
ATHIRAMPUZHA P.O.,
KOTTAYAM DISTRICT.

*** ADDL.R14 IS IMPLEADED AS PER ORDER DT.20.12.2004 IN IA. NO.16703/2004.**

*** ADDL.R15 TO R17 AR IMPLEADED**

ADDL.R15. ANNIE JACOB, ,. W/O.MATHEW VARGHESE,
KADUVAKYUZHIYIL HOUSE, MANARCAUD P.O.,
KOTTAYAM WORKING STAFF NURSE,
G.N.SCHOOL, ALLEPPEY.

ADDL.16. LIGY K.G., W/O.FRANCIS DAMINION
KARUMANCHERIL HOUSE EZHUPUNNA SOUTH P.O.,
CHERTHALA WORKING AS STAFF NURSE,
G.N.SCHOOL ALLEPPEY.

ADDL.R17. LOVELY JACOB, KOLLAKOMBIL HOUSE,
PALLOORKAVU (VIA) PERUVANTHANAM, IDUKKI,
WORKING STAFF NURSE,
G.N.SCHOOL ALLEPPEY.

*** ADDL.R15 TO R17 ARE IMPLEADED AS PER ORDER DT.10.8.2006**
IN I.A. 11032/2006

BY ADV. SRI.V.M.KUTTY MOOSA
SRI.K.M.STALIN
GOVERNMENT PLEADER SRI.P.K.RAVIKRISHNAN
SRI.P.V.SURENDRANATH
SRI.N.RAGHURAJ
SRI.O.D.SIVADAS
SRI.R.S.KALKURA
SRI.C.J.JOY
SRI.V.J.JAMES
SRI.NOUSHAD THOTTATHIL,SC,INDIAN NURSIN
SRI.K.M.SATHYANATHA MENON
SRI.C.J.XAVIER
SRI.NIDHI BALACHANDRAN

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 14/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON CMP. NOS.47414/2001 IN CMP. 55890/2000 IN OP. NO.32790/2000

DISMISSED

14.03.2007 **SD/- S.SIRI JAGAN, JUDGE**

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE QUALIFICATION AND EXPERIENCE REQUIRED FOR VARIOUS POSTS IN NURSING PROFESSION PRESCRIBED BY THE 3RD RESPONDENT ON 27.3.85.

EXT.P2:- COPY OF THE CIRCULAR NO.EE2-25108/20000/DHS DT.18.10.2000 ISSUED BY 2ND RESPONDENT.

EXT.P3:- COPY OF THE G.O.(MS) 104/79/HD DT.6.6.79 ISSUED BY THE GOVERNMENT OF KERALA.

EXT.P4:- COPY OF THE CIRCULAR NO.EE2-25108/2000/DHS DT.5.3.01 ISSUED BY THE DIRECTOR OF HEALTH SERVICES.

RESPONDENTS EXHIBITS

EXT.R14(a):- COPY OF THE RANK LIST DT.14.8.01.

/TRUE COPY/

tss

S. SIRI JAGAN, J.

O.P.NO. 32790 OF 2000

DATED THIS THE 14th DAY OF MARCH, 2007

JUDGMENT

The petitioners in this original petition are Staff Nurses in the Health Services Department. They are B.Sc. Nursing graduates. They originally challenged Ext.P2 circular prescribing qualifications for the post of Nursing Tutors in Health Services Department on the ground that the qualifications prescribed by Ext.P2 is a lesser qualification than what has been prescribed by the Indian Nursing Council by Ext.P1, which are qualifications prescribed by Regulations issued by the Indian Nursing Council by virtue of their powers under Section 16 of the Indian Nursing Council Act 1947. During the pendency of the original petition, the Government superseded Ext.P2 by Ext.P4 circular, again prescribing qualifications to the post of Nursing Tutor, which are lesser qualifications than what had been prescribed as per Ext.P1. Therefore the petitioners have amended the original petition and challenged Ext.P4. Since Ext.P2 circular is no longer in force, I need only consider the challenge of the petitioners against Ext.P4. In Ext.P4 it is stated that these qualifications are in accordance with the qualifications

prescribed as per G.O.(MS)No.74/92/H&FWD dated, 21.5.1992. Under the said circumstances, the petitioners have also included prayer for quashing that Government Order also.

2. The petitioners' contention is that as per Ext.P1, the qualifications prescribed for Tutors in School of Nursing are as follows:

> "3. Tutors/Clinical Instructors: Master of Nursing; if not available B.Sc/Post-Basic B.Sc., even if this is not available a candidate with Diploma in Nursing Education & Administration or any other equivalent post-basic Diploma with 8 years of teaching and administrative experience in Nursing.
>
> In teaching institutions the Nursing Superintendent/Deputy Nursing Superintendent/ Assistant Nursing Superintendent should have the same qualification as the Principal and Vice-Principal, Assistant Nursing Superintendent should have the same qualifications as Tutors."

3. On the other hand, in Ext.P4 the qualifications prescribed are as follows:

> "I. (1) Post Basic Degree in Nursing issued by a recognised University and recognised by the Indian Nursing Council.
>
> Or
>
> (2) Successful completion of post Basic Certificate Course for Nursing Tutors/Midwifery Tutor conducted by a recognised institution and recognised by Indian Nursing Council.
>
> OR
>
> (3) Post Basic Diploma in Nursing issued by a recognised University and recognised by the Indian Nursing council.
>
> OR

(4) Degree in Nursing issued by a recognised University in India and recognised by Indian Nursing Council.

AND

One year experience in Nursing gained by serving in State Government/Central Government/Quasi Government Institution.

II. Registration with Kerala Nurses and Midwives Council as Nurses and Midwives."

4. Learned Counsel for the petitioners submits that a perusal of Exts.P1 and P4 would show that the qualifications mentioned in Ext.P4 are evidently lesser qualifications than those prescribed in Ext.P1. According to him the authority to prescribe qualifications for appointment to various posts in the Nursing faculty is the Nursing Council and when that Nursing Council prescribes specific qualifications, the State Government has no power to dilute those qualifications by prescribing lesser qualifications than what have been prescribed by the Nursing Council. The petitioners also refers to the decision of the Supreme Court in **State of Tamil Nadu and another Vs. S.V. Bratheep (minor) and others ((2004) 4 SCC 513)**. In C.M.P.No.47414/2001, there was an order of stay dated, 4.10.01, of recruitment to the posts of Nursing Tutor in Nursing Schools under the respondents in violation of the Regulations of the Indian Nursing Council.

5. The 2nd respondent has filed a counter affidavit. Going by the same, I am unable to ascertain whether the 2nd respondent is supporting or opposing the original petition. In paragraph 2, they

stated as follows:

> "2. It is submitted that Indian Nursing Council prescribe qualification and experience required for various posts in Nursing Profession and State Government is the authority to establish policy decision and prescribes essential qualifications for various posts in the state considering the qualifications prescribed by Indian Nursing Council. Indian Nursing Council (INC) is the authority who gives recognitions to the Nursing Teaching Institutions."

The averments in paragraph 2 quoted above would mean that according to the 2nd respondent the authority to prescribe qualifications for the Nursing faculty is the Indian Nursing Council. The necessary corollary to the same would be that the State Government does not have power to dilute those qualifications by prescribing lesser qualifications than what have been prescribed by the Indian Nursing Council.

6. It is general knowledge that in respect of various professional institutions in India, the Central Government has under various Acts constituted authorities for various faculties who have been vested with the powers to prescribe qualifications for appointment to various posts under those faculties and also for admissions to professional courses offered by those institutions. In the decision of **State of Tamil Nadu and another Vs. S.V. Bratheep (minor) and others ((2004)4 SCC 513),** the Supreme Court had occasion to consider the question as to whether the State Government has powers to prescribe qualifications for admission to

degree courses in professional Engineering Colleges which qualifications are lesser than those prescribed by All India Council for Technical Education which is one such authority constituted under a Central Act namely, All India Council for Technical Education Act 1987. In paragraphs 9 and 10 in that decision, the Supreme Court has held as follows:

> "9. Entry 25 of List III and Entry 66 of List I have to be read together and it cannot be read in such a manner as to form an exclusivity in the mater of admission but if certain prescription of standards have been made pursuant to Entry 66 of List I, then those standards will prevail over the standards fixed by the State in exercise of powers under Entry 25 of List III insofar as they adversely affect the standards laid down by the Union of India or any other authority functioning under it. Therefore, what is to be seen in the present case is whether the prescription of the standards made by the State Government is in any way adverse to, or lower than, the standards fixed by AICTE. It is no doubt true that AICTE prescribed two modes of admission – one is merely dependent on the qualifying examination and the other dependent upon the marks obtained at the common entrance test. The appellant in the present case prescribed the qualification of having secured certain percentage of marks in the related subject which is higher than the minimum in the qualifying examination in order to be eligible for admission. If higher minimum is prescribed by the State Government than what had been prescribed by AICTE, can it be said that it is in any manner adverse to the standards fixed by AICTE or reduces the standard fixed by it? In our opinion, it does not. On the other hand, if we proceed on the basis that the norms fixed by AICTE would allow admission only on the basis of the marks obtained in the qualifying examination, the additional test made applicable is the common entrance test by the State Government. If we proceed to take the standard fixed by

AICTE to be the common entrance test then the prescription made by the State Government of having obtained certain marks higher than the minimum in the qualifying examination in order to be eligible to participate in the common entrance test is in addition to the common entrance test. In either event, the streams proposed by AICTE is inexorable and that minimum alone should be taken into consideration and no other standard could be fixed even the higher as stated by this Court in *Dr.Preeti Srivastava case*. It is no doubt true, as noticed by this Court in *Adhiyaman case* that there may be situations when a large number of seats may fall vacant on account of the higher standards fixed. The standards fixed should always be realistic which are attainable and are within the reach of the candidates. It cannot be said that the prescriptions by the State Government in addition to those of AICTE in the present case are such which are not attainable or which are not within the reach of the candidates who seek admission for engineering colleges. It is not a very high percentage of marks that has been prescribed as minimum of 60% downwards, but definitely higher than the mere pass marks. Excellence in higher education is always insisted upon by a series of decisions of this Court including *Dr. Preeti Srivastava case*. If higher minimum marks have been prescribed, it would certainly add to the excellence in the matter of admission of the students in higher education.

10. Argument advanced on behalf of the respondents is that the purpose of fixing norms by AICTE is to ensure uniformity with extended access of educational opportunity and such norms should not be tinkered with by the State in any manner. We are afraid, this argument ignores the view taken by this Court in several decisions including *Dr. Preeti Srivastava case* that the State can always fix a further qualification or additional qualification to what has been prescribed by AICTE and that proposition is indisputable. The mere fact that there are vacancies in the colleges would not be a matter which would go into the question of fixing the standard of education. Therefore, it is difficult to

> subscribe to the view that once they are qualified under the criteria fixed by AICTE they should be admitted even if they fall short of the criteria prescribed by the State. The scope of the relative entries in the seventh schedule to the Constitution has to be understood in the manner as stated in *Dr. Preeti Srivastava case* and, therefore, we need not further elaborate in this case or consider arguments to the contrary such as on application of occupied theory no power could be exercised under Entry 25 of List III as they would not arise for consideration"

7. In view of the said decision, which although is in relation to prescription of qualification for admissions to engineering courses, is equally applicable to appointment of faculties for teaching those courses,it is clear that the authority constituted under the relevant Act in respect of professional faculties is the ultimate authority to prescribe qualifications for admission as well as appointment of Teachers to the faculties. The decision would further show that the State Government although can prescribe additional or further qualifications in order to further ensure excellence, in the matter of higher education, the State Governments have no power vested in them to prescribe qualifications which are lesser than those prescribed by the statutory authority. In this case admittedly the Nursing Council has as revealed in Ext.P1, which is not under dispute before me, has prescribed specific qualifications for appointment to the post of Nursing Tutors. Evidently the qualifications mentioned in Ext.P4 are lesser qualifications than what have been prescribed as evidenced by Ext.P1. These qualifications are stated to be prescribed as per

G.O.(MS)No.74/92/H&FWD dated 21.5.92. Therefore both Ext.P4 and the Government order referred to therein are ultra vires the Indian Nursing Council Act 1947 and the Regulations prescribed by the Nursing Council in accordance with the powers vested in it under Section 16 of the Act.

8. Accordingly I strike down Ext.P4 and G.O.(MS) No.74/92/H&FWD dated 21.5.92 on the basis of which Ext.P4 has been issued and direct the respondents 1 and 2 that recruitment to the post of Nursing Tutor in Nursing Schools shall be made only as per qualifications prescribed by the Nursing Council as shown in Ext.P1. Needless to say, if any appointment has been made contrary to the qualifications prescribed as shown in Ext.P1, such appointments would be unsustainable and liable to be cancelled to ensure which the respondent shall take steps. If the Government so wish, they may pass fresh special rules or executive orders in accordance with the regulations prescribed by the Indian Nursing Council or they can follow the qualifications prescribed by the Nursing Council for making appointments to the post of Nursing Tutor.

Original petition is allowed as above.

S. SIRI JAGAN, JUDGE

Acd